

Nadler: New Whistleblower Document Reveals Failure of EPA Indoor Cleanup Program

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NEW YORK -- Declaring its findings "more damning evidence emblematic of the failed premise and execution of the Environmental Protection Agency's (EPA) so-called residential cleanup program post 9/11," Rep. Jerrold Nadler today released a new memo from 24-year EPA Hazardous Waste Identification Division veteran, Cate Jenkins, Ph.D, revealing that even the most rigorous type of EPA-led indoor cleanup has failed to rid apartments of World Trade Center (WTC) contamination. The memo finds that the building at 114 Liberty Street, which received the more rigorous of all EPA-led cleanups, still has visible WTC dust inside, containing high levels of asbestos and silica, and that the cleanup was not done to federal legal standards. The EPA has refused to take further action, even though the EPA program requires cleanup of all visible WTC dust. The report also states that the EPA made false scientific and other claims in defense of its decision not to re-clean. Residents of the building, who still cannot occupy their homes, and whose federal housing assistance has been cut off because the EPA declared the building "clean," joined Nadler at a press conference today.

"On the eve of the second anniversary of the worst ever attack on America's soil, I stand here with New Yorkers who are still, two years later, being victimized. Only this time, it is their own federal government that is victimizing them," Rep. Nadler said.

Rep. Nadler continued, "This latest example of EPA negligence is extremely damning because this building got arguably EPA's best effort post 9/11." He added, "Just think, very few apartments got this so-called stringent cleanup that we now confirm is deeply flawed. Maybe another 3900 apartments got the seriously shoddy, less-rigorous cleanup. What about the other 18,000 apartments downtown and those in Brooklyn, and the thousands of workspaces, schools, and firehouses that have never received a government cleanup?" asked Nadler.

114 Liberty Street is an eleven-story building facing "Ground Zero," which sustained extensive contamination from the WTC collapse. Some individual residents paid for their apartments to be cleaned professionally before negotiating a building-wide cleanup with EPA. EPA and the City's Department of Environmental Protection (DEP) began work in March 2003. EPA contractors cleaned the building two times, because their own testing after the first cleanup revealed remaining toxins. After the second cleanup, the EPA declared the building free of contaminants. Because the building still had visible dust, the residents hired their own professional testing firm, Ambient Group, Inc. Ambient Group found high levels of asbestos and silica in the remaining dust.

The EPA refused to clean again, and according to Jenkins' memo, its representatives defended their decision to take no further action "to the extent of misrepresenting test results in its reports and statements. . . " and " . . . dismissing resident testing of dusts for asbestos which proved that visible dust accumulations were still present, and at higher concentrations than background." The memo also states that the EPA did not clean to legally-mandated, health-based standards and "knowingly expos[ed] residents to silica, a human carcinogen, at levels higher than EPA's criterion." Dr. Jenkins concludes that "It . . . appears that EPA does not want the trouble and added expense that would be entailed by additional abatements." According to Jenkins, to justify its refusal to re-clean, the EPA even argued erroneously that the asbestos found by Ambient in the dust was pre-existing, but states that "this could not be the case" because the WTC-type Chrysotile asbestos had not been present in any exposed building materials.

The EPA announced its "Indoor Residential Cleanup Program" in May of 2002, eight months after the 9/11 attacks. Two general types of cleaning were offered, one for occupied apartments, and another, more rigorous abatement, for those apartments in then unoccupied buildings. EPA was the "lead agency" for the entire cleanup program, though DEP served as on-site supervisors for the unoccupied buildings. Apartments at 114 Liberty were among only a handful of apartments that received this more extensive abatement. To date, only about 4,000 of the more than 22,000 downtown apartments have received any cleaning under the EPA program, and no workspaces or schools have been cleaned under the program. The program's request line closed in December 2002.

"The EPA went to great lengths in this case, and in its program in general to take the easy way out. It has consistently sought to do as little as it could get away with," said Nadler. "Remember, EPA officials have repeatedly denied that we had a problem in New York -- they still, today, say it's safe. The whole program was premised not on science, but on public relations. They said this was about 'allaying our concerns,' not cleaning our homes, offices and schools," Nadler added.

The EPA has repeatedly defended its program. When the program was criticized by New York officials last September, an EPA Region 2 Spokesperson stated to the New York Daily News that "Our cleanup methods will be effective in cleaning up not just asbestos, but also heavy metals and other contaminants."

The program was sharply criticized in the recently released EPA IG's report. The IG said this program "does not meet the minimum criteria for protecting human health the EPA established." The IG found the program flawed because it tested only for asbestos (and not for the multiple contaminants identified in WTC dust), used sub-par testing methods, was prone to cause re-contamination because it did not treat buildings as systems, and was geographically too limited because it didn't go everywhere the plume went. The report also states that the White House swayed EPA officials to downplay public health risks, due to political "competing considerations."

"In the wake of the bombshell IG report, I think the rest of America is becoming increasingly horrified to find out what has happened to people who live and work in New York. I know they will be shocked to learn that, in this case, the EPA would condemn the building's 16 children to playing on floors contaminated with life-threatening toxins. " said Rep. Nadler.

Nadler added, "I want to make it perfectly clear that this is not just one bad case. Tens of thousands of New York residents, workers and students were falsely lured back into their homes, offices and schools by unsubstantiated EPA assurances. They still don't know whether their indoor spaces are clean. But even more troubling is the fact that many New Yorkers were forced back into spaces that they knew were contaminated, because they had private tests commissioned, but they could no longer afford to stay out. EPA's pronouncements of 'safety' denied them insurance coverage and extended federal mortgage or rental assistance. Often they were forced to choose between their health or their home."

Rep. Nadler said, "The EPA must now provide proper testing and cleanup, up to federal Superfund standards, for New York. It must adopt the recommendations in the IG report, and make good on the promise Regional Administrator Jane Kenny made on the day she announced the cleanup program -- '...we will not consider our job complete until residents and the business community of Lower Manhattan have regained a sense of comfort in the place that they call home.'"

To obtain additional information on Congressman Nadler's response to the EPA's handling of post 9/11 clean-up, please visit his website at <http://www.house.gov/nadler/EPA.htm>.

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Recommended Procedures for a Proper
World Trade Center Indoor Cleanup Program
(Includes Excerpts from the EPA IG Report)

- Protect the health of people by ensuring that the new clean-up meets Superfund regulations and guidelines, as set forth in CERLA and the National Contingency Plan;
- Contaminated buildings must be treated as a system. The EPA's practice of selectively cleaning individual apartments did not ensure that cleaned apartments will not be re-contaminated by uncleared apartments through the HVAC system;
- Test for all contaminants of concern that have been found in WTC dust, including, but not limited to: asbestos, dioxin, mercury, lead, PCB's, PAH's, fiberglass, silica, nickel, arsenic, cadmium and chromium;
- Conduct all tests by reputable licensed and certified technicians/laboratories that operate in compliance with OSHA standards and regulatory requirements regarding worker protection. Such entities must also comply with all EPA procedures at hazardous waste sites;
- Sample both air and dust. Wipe tests for dust and "aggressive" air tests and other procedures must be utilized. EPA used "passive" sampling in its Indoor Cleanup Program. Use the most sensitive testing and analytical equipment available. Filters and microscopes must be state-of-the-art and calibrated;
- Include work spaces and schools as well as residential buildings in the cleanup as mandated by Presidential Decision Directive 62, and confirmed to be applicable by the EPA Inspector General Report. Currently, EPA has refused to test any spaces other than residences, and;
- Include all geographic locations impacted by the WTC dust in the clean-up effort. EPA's decision to clean residences only south of Canal Street in Manhattan neglected the need for clean-up in locations that were under the dust cloud, including the Lower East Side, Chinatown, and parts of Brooklyn. As the EPA Inspector General's report noted, "the area of the cleanup should be determined by 'collecting and analyzing samples starting at Ground Zero and radiating outward in concentric circles until the boundary of WTC contamination [is] determined.'"

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